

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)	
)	
STRATEGIC PLANNING GROUP, INC.,)	
DAVID ALEXANDER ROURKE, SR. &)	
JARROD ANDREW SHERMAN,)	
)	Docket No. E-2018-0044
RESPONDENTS.)	
)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Massachusetts Securities Division (the “Division”) and Strategic Planning Group, Inc. (“SPG”), David Alexander Rourke, Sr. (“Rourke”), and Jarrod Andrew Sherman (“Sherman”) (collectively, “Respondents”) with respect to the investigation by the Division into whether Respondents’ conduct violated MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and the corresponding regulations promulgated thereunder at 950 MASS. CODE REGS. 10.00 – 14.413 (the “Regulations”).

On August 13, 2019, Respondents submitted an Offer of Settlement (the “Offer”) to the Division. Respondents neither admit nor deny the Statement of Facts set forth in Section V and the Violation of Law set forth in Section VI below and consent to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the claims brought thereby with prejudice.

II. JURISDICTION AND AUTHORITY

1. The Division has jurisdiction over matters relating to securities, as provided for by the Act. In part, the Act authorizes the Division to regulate: (1) the offers, sales, and purchases of securities; (2) those individuals offering and/or selling securities; and (3) investment adviser representatives conducting business within the Commonwealth.

2. The Offer was made and this Order is entered in accordance with the Act. Specifically, the acts and practices investigated by the Enforcement Section took place in Massachusetts and were directed toward Massachusetts investors while Respondents Rourke and Sherman were registered in the securities industry in Massachusetts.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the period of May 22, 2013, to November 11, 2018 (the "Relevant Time Period").

IV. RESPONDENTS

4. Strategic Planning Group, Inc. ("SPG") is a corporation organized under the laws of Massachusetts. SPG is an investment adviser with headquarters in Wellesley, Massachusetts. SPG has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 124855. SPG has been registered with the Securities and Exchange Commission (the "SEC") as an investment adviser and has been notice filed in Massachusetts since July 15, 2011.

5. David Alexander Rourke, Sr. ("Rourke") is a resident of Massachusetts. Rourke has a FINRA CRD number of 2089364. Rourke has been registered as a SPG investment adviser representative in Massachusetts since February 7, 2005.

6. Jarrold Andrew Sherman (“Sherman”) is a resident of Massachusetts. Sherman has a FINRA CRD number of 2868422. Sherman has been registered as a SPG investment adviser representative in Massachusetts since May 23, 2011.

V. STATEMENT OF FACTS

A. The Security

7. Ecoark Holdings, Inc. (“Ecoark”) is a Nevada corporation, incorporated on November 19, 2007, with headquarters in Rogers, Arkansas. As a holding company, Ecoark is the parent company of several subsidiaries including, but not limited to, Ecoark, Inc. and Zest Labs, Inc.

8. In its most recent Form 10-Q filed with the SEC on February 11, 2019, Ecoark characterized itself as an “AgTech company that is focused on modernizing the post-harvest fresh food supply chain[.]”

9. Ecoark securities, in the form of Ecoark common stock, currently trade on the OTCQX exchange, using the symbol “ZEST.” Ecoark filed its Form S-1 Registration Statement with the SEC on April 29, 2016. The SEC issued a notice of effectiveness on August 9, 2016.

10. Prior to public trading on the OTCQX exchange, Ecoark was a private company that sought equity financing through the issuance of private securities offerings.

B. The Respondents

a. Strategic Planning Group, Inc.

11. SPG is a Massachusetts corporation and SEC-registered investment adviser based in Wellesley, Massachusetts. SPG offers financial planning and investment management services to its clients.

12. During the Relevant Time Period, SPG's Form ADV Part 1 stated that SPG did not buy or sell securities that it also recommended to its advisory clients.

13. During the Relevant Time Period, SPG's compliance manual required that all SPG employees complete a request form before engaging in any outside business activity, defined in the compliance manual as an activity for which an SPG employee receives compensation in any form from a business organization.

14. SPG's investment adviser representatives have recommended that SPG clients invest up to 5% of their portfolio in Ecoark.

b. David Alexander Rourke, Sr.

15. Rourke is the president, treasurer, secretary, and director of SPG. Rourke is also a registered investment adviser representative with, and 90% owner of, SPG.

16. Rourke has invested in Ecoark both while it was a private company and since it has become a publicly-traded company.

17. Pursuant to an "Advisory/Consulting Agreement," dated May 22, 2013, executed between Ecoark and Rourke (the "Rourke Agreement"), Rourke served as an "[a]dvisor/[c]onsultant" to Ecoark until May 22, 2016. As an advisor/consultant, Rourke was to provide business, operational, sales and marketing, communication, finance, account, or tax-related services and serve as an advisor to Ecoark as part of a collective

advisory group. In connection with the Rourke Agreement, Rourke received 50,000 shares of Class C Ecoark common stock.

18. Rourke has recommended that SPG clients purchase Ecoark stock.

19. Rourke did not complete the request form in connection with the Rourke Agreement as required by SPG's compliance manual for outside business activities.

20. From August 15, 2016 until at least March 12, 2018, Rourke has continued to purchase publicly-traded Ecoark stock. During this time, Rourke has reported that he purchased 83,234 shares of publicly-traded Ecoark stock.

21. In total, Rourke has estimated that he has invested approximately \$800,000 of his family savings in Ecoark.

c. Jarrod Andrew Sherman

22. Sherman is the Chief Compliance Officer of SPG. Sherman is also a registered investment adviser representative with, and 10% owner of, SPG.

23. Sherman has invested in Ecoark both while it was a private company and since it has become a publicly-traded company.

24. Pursuant to an "Advisory/Consulting Agreement," dated May 22, 2013, executed between Ecoark and Sherman (the "Sherman Agreement"), Sherman served as an "[a]dvisor/[c]onsultant" to Ecoark until May 22, 2016. As an advisor/consultant, Sherman was to provide business, operational, sales and marketing, communication, finance, account, or tax-related services and serve as an advisor to Ecoark as part of a collective advisory group. In connection with the Sherman Agreement, Sherman received 50,000 shares of Class C Ecoark common stock.

25. Sherman did not complete the request form in connection with the Sherman Agreement as required by SPG's compliance manual for outside business activities.

26. From March 6, 2017 until at least February 20, 2018, Sherman has continued to purchase publicly-traded Ecoark stock. During this time, Sherman has reported that he purchased 45,800 shares of publicly-traded Ecoark stock.

27. In total, Sherman has estimated that he has invested approximately \$300,000 of his personal savings in Ecoark.

C. The Conduct at Issue

a. Rourke and Sherman's Conflict of Interest

28. There is no documented disclosure of the existence of the Rourke Agreement to SPG clients. There is no documented disclosure of the existence of the Sherman Agreement to SPG clients.

29. Rourke had an incentive to invest SPG clients' funds in Ecoark stock to support or increase Ecoark's stock price.

30. Sherman had an incentive to invest SPG clients' funds in Ecoark stock to support or increase Ecoark's stock price.

31. Nearly all of SPG's clients who have purchased Ecoark stock have reported losses on their investment.

b. SPG's Form ADV

32. During the Relevant Time Period, SPG has represented that its representatives do not invest in the same securities as their clients in SPG's Form ADV Part 1.

33. Despite this representation, Rourke and Sherman have, throughout the Relevant Time Period, purchased Ecoark stocks while concurrently recommending that SPG's clients also purchase Ecoark stock.

VI. VIOLATION OF LAW

Count I – Violation of MASS. GEN. LAWS ch. 110A, § 102

34. Section 102 of the Act provides:

It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

MASS. GEN. LAWS ch. 110A § 102.

35. The conduct of Respondents, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 102(2).

VII. ORDER

IT IS HEREBY ORDERED:

- A. Respondents shall permanently cease and desist from further violations of Section 102(2) of the Act in the Commonwealth;
- B. Respondents are censured by the Division;
- C. SPG shall provide, within 90 days of the Order, a report to the Division detailing the process SPG engaged in to review and enhance its policies and procedures as guided and informed by the allegations contained in this Offer. The report will include, at a minimum, a description of the review performed, the conclusions reached, a summary of the recommended changes, and the timeline in which SPG will enact the changes. SPG

represents that SPG has engaged an independent third-party consultant (“Independent Compliance Consultant”) and has furnished the Enforcement Section with evidence of such engagement. SPG agrees that the Independent Compliance Consultant’s compensation and expenses shall be paid exclusively by SPG. SPG represents that it has provided the Independent Compliance Consultant with access to books, records, files, and personnel as requested for the review. SPG also represents that it has required the Independent Compliance Consultant to conduct a comprehensive review of SPG’s policies, procedures, training, and/or processes as guided and informed by the allegations contained in the Order. SPG further represents that the Independent Compliance Consultant is providing ongoing compliance support to SPG;

D. Respondents shall pay an administrative fine in the amount of \$225,000 (USD) to the Commonwealth of Massachusetts. Payment shall be made in the following installments: (1) \$45,000 within 14 days of the Order; (2) \$45,000 within 90 days of the Order; (3) \$45,000 within 180 days of the Order; (4) \$45,000 within 270 days of the Order; and (5) \$45,000 within 360 days of the Order. These payment installments shall be (1) made by United States postal money order, certified check, bank cashier’s check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the payor and the docket number of the matter. Additionally, Respondents shall provide the Division with notice twenty-four (24) hours prior to each payment;

E. Within sixty (60) days of the Order, Respondents shall provide a copy of the Order to current and former advisory clients who purchased Ecoark securities;

F. Respondents shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that Respondents shall pay pursuant to the Division's Order;

G. If any Respondent is the subject of a voluntary or involuntary petition in bankruptcy under 11 U.S.C. §§ 101, et seq., within three-hundred sixty-five (365) days of the entry of a signed Order issued pursuant to this Offer, Respondent shall notify the Enforcement Section, in a signed writing, within five (5) days of the date of the petition;

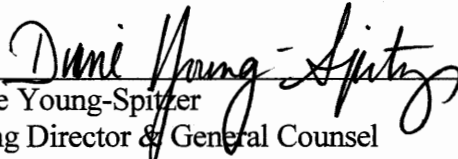
H. Respondents shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that Respondents shall pay pursuant to the Division's Order;

I. For good cause shown, the Enforcement Section may agree to extend any of the procedural deadlines set forth above. Any agreement to extend any of the procedural deadlines set forth above shall be made in writing; and

J. Upon the issuance of the Order, if Respondents fail to comply with any of the terms set forth in the Order, the Enforcement Section may take appropriate action pursuant to Sections 204, 407A, and 408 of the Act. Additionally, after a fair hearing and an issuance of an appropriate order finding that Respondents have not complied with the Order, the Enforcement Section may move to have the Order declared null and void, in

whole or in part, and re-institute the administrative proceeding and associated investigation that had been brought against Respondents.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 
Diane Young-Spitzer
Acting Director & General Counsel
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Date: September 24, 2019